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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,064	11/27/2000	Richard Mihalik	PHSC.70080	4761

7590 11/30/2001
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EXAMINER

PESELEV, ELLI

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 11/30/2001

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 129 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 129 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

S.N. 09/723,064
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Claims 18-21 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for fighting infection, counteracting inflammation and reducing fever, does not reasonably provide enablement for the treatment of an animal for any condition. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terminology "any salt of oxytetracycline" renders claim 2 indefinite because it is not clear what is encompassed by said terminology. Such terminology as "a salt of oxytetracycline" can be used to overcome the rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-7 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Grimberg (U.S. Patent No. 5,151,270).

Grimberg discloses a composition containing an antibiotic such as oxytetracycline, an analgesic such as dexamethasone (column 3, lines 11-16), a preservative (column 3, line 39) and

solvent such as distilled water (column 4, line 17), a method of making said composition and a method of treating an animal with the said composition. The claimed composition and method are anticipated by Grimberg.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grimberg (U.S. Patent No. 5,151,270) in combination with Plumb (submitted by applicant).

Grimberg discloses a composition containing an antibiotic and an analgesic and a method of treating an animal with said composition but does not disclose specific antibiotics and analgesics encompassed by the instant claims. However, since specific antibiotics and analgesics encompassed by the instant claims were well known in the art at the time the instant invention was made, a person having ordinary skill in the art at the time the instant invention was made would have been motivated to combine various antibiotics and analgesics into a single composition because the results obtained from such a combination would have been expected. The claimed compositions and methods are deemed prima facie over Grimberg in combination with Plumb.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (703) 308-4616. The examiner can normally be reached on weekdays from 8.30 a.m. to 5.00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Elli Peselev
ELLI PESELEV
PRIMARY EXAMINER
GROUP 1600